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Filing date: **11/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77871860
Applicant	Michael Foods of Delaware, Inc.
Applied for Mark	SIMPLY POTATOES STEAMABLES
Correspondence Address	ERIC D PAULSRUD LEONARD STREET AND DEINARD 150 SOUTH 5TH STREET, SUITE 2300 MINNEAPOLIS, MN 55402 UNITED STATES eric.paulsrud@leonard.com
Submission	Applicants Request for Remand and Amendment
Attachments	SIMPLY POTATOES STEAMABLES - sn77871860 - Request for Remand to Consider Amendment - 07-NOV-2011.pdf ( 3 pages )(193308 bytes )
Filer's Name	Eric D. Paulsrud
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Signature	/Eric D. Paulsrud/
Date	11/07/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Michael Foods of Delaware, Inc.	)	
	)	
Mark: SIMPLY POTATOES STEAMABLES	)	Ex Parte Appeal No. 77871860
	)	
Serial No. 77/871,860	)	
	)	

**APPLICANT’S REQUEST FOR REMAND TO CONSIDER  
AMENDMENT TO THE DESCRIPTION OF GOODS**

COMES NOW Applicant, Michael Foods of Delaware, Inc., pursuant to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 1205.01, and respectfully moves the Board to remand the application to the Examining Attorney to consider Applicant’s request to amend the application by modifying the description of the goods. The description of goods currently reads, “microwavable processed potatoes purchased frozen or refrigerated.” Applicant intends to use the mark solely in connection with goods that are refrigerated, not frozen. Accordingly, the amended description would read: “microwavable processed potatoes purchased refrigerated.”

This proposed amendment is limiting and does not expand the existing description and should be allowed.

The proposed amendment to the description of goods is relevant to the issue on appeal, asserted likelihood of confusion with the prior registration for the mark STEAM’ABLES, because the STEAM’ABLES registration is limited to goods that are frozen. Frozen and refrigerated goods are found in different sections of a store, the ordinary channel of trade in which the goods would be encountered by consumers. The difference in the goods and the difference in the location the store are relevant *DuPont* factors for consideration of the issue of

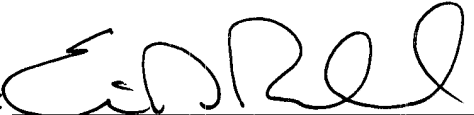
likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

This request is not made for the purposes of delay or any other improper purpose.

Applicant's brief on appeal is currently due on Monday, December 5, 2011.

WHEREFORE, Applicant respectfully requests that the application be remanded to the Examining Attorney for consideration of applicant's proposed amendment of the description of goods from "microwavable processed potatoes purchased frozen or refrigerated" to "microwavable processed potatoes purchased refrigerated."

Dated: November 7, 2011

By:   
Eric D. Paulsrud

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**ATTORNEYS FOR APPLICANT  
MICHAEL FOODS OF DELAWARE, INC.**

**Certificate of Electronic Filing**

The undersigned hereby certifies that this paper was filed electronically with the Electronic System for Trademark Trial and Appeals (ESTTA) in PDF format on this 7<sup>th</sup> day of November, 2011.

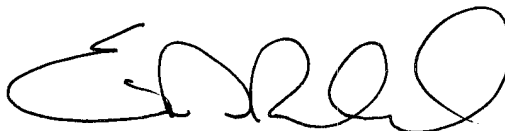


Eric D. Paulsrud

**Certificate of Service**

It is hereby certified that a true copy of the foregoing REQUEST FOR REMAND TO CONSIDER A PROPOSED AMENDMENT TO THE DESCRIPTION OF GOODS, was served on Examining Attorney, Barney L. Charlon, on Nov. 7, 2011, by depositing a true and correct copy, first class postage prepaid, in the United States mails, addressed to:

Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451  
Attention: Barney L. Charlon  
Trademark Examining Attorney  
Law Office 104



Eric D. Paulsrud